HOWARD E. MANNING, JR. SUPERIOR COURT JUDGE WAKE COUNTY COURTHOUSE RALEIGH, N.C. 27602 (919)792-4955 (direct) (919)792-4951 (f)

MEMORANDUM

January 31, 2011

FROM: Howard E. Manning, Jr.

TO: Ann McColl, Esq. - Legislative Liaison -SBE

Subject: EOC testing in U.S. History, Civics and Economics and Physical Science and the constitutional rights of children to obtain a sound basic education under the *Leandro* decisions. EOC testing in those and other core Leandro subjects is constitutionally mandated as part of the accountability part of the process and not subject to elimination based on public likes and dislikes.

Ms. McColl:

Enclosed you will find a copy of a Memorandum which I sent last June to President Pro Tem Basnight and Speaker Hackney who were then the leadership of the party in the majority of the legislature on the subject of elimination of EOC tests (other than those required by the Federal Government) in high school courses. As an integral part of that memorandum, the basis for the *Leandro* mandate concerning the EOC tests and accountability to measure student academic performance to determine if they are obtaining a sound basic education is attached as Leandro Tenets & Minimal Resource Compliance Standards.

Quite frankly, the legislation referred to in that memorandum was never enacted and the issue should have been resolved once and for all in order to prevent a constitutional confrontation.

Thousands of children are **not being taught to read by the third grade** due in large measure to a failure of classroom instruction from kindergarten through the third grade. In 2009-2010, there were 19,558 third graders who were performing at Level I in reading statewide and there were 20,555 third graders who were performing at Level II in reading statewide for a total of **40,113 children below grade level (level III)**. Level III shows that the child is obtaining a sound basic education in reading.

We need to focus on that and not continually try to tear down a mandated system of accountability because the adults do not want to have their performance measured when their high school students cannot do grade level work and because children do not want adults to know that they are not proficient in essential core subjects as set out in the **Leandro decisions**.

You are free to make copies of this and the enclosure and show them to whomever you need to so we can avoid starting this up again this session simply because there has been a change in leadership in the General Assembly.

HEND!

HOWARD E. MANNING, JR. SUPERIOR COURT JUDGE WAKE COUNTY COURTHOUSE RALEIGH, N.C. 27602 (919)792-4955 (direct) (919)792-4951 (f)

MEMORANDUM

June 14, 2010

FROM: Howard E. Manning, Jr.

TO: The Honorable Marc Basnight, President Pro Tem of the Senate

The Honorable Joe Hackney, Speaker of the House of Representatives

Subject: Elimination of EOC testing in U.S. History, Civics and Economics and Physical Science and the constitutional rights of children to obtain a sound basic education under the **Leandro** decisions.

Gentlemen:

I recently read in the newspaper that on June 3, 2010, the House Representatives adopted, by a vote of 64-53, an amendment to Senate Bill 897 on page 35, line 34, by adding a new section:

"ELIMINATION OF CERTAIN STATE-ADMINISTERED TESTS
SECTION 7.28.(a) The following end-of-course tests are hereby eliminated:

- (1) United States History
- (2) Civics and Economics
- (3) Physical Science

SECTION 7.28.(b) Recurring funds in the amount of two million one hundred twenty-five thousand ninety-four dollars (\$2,125,094) that are not needed for the state-administered tests eliminated in subsection (a) of this

The newspaper article also contained several quotes from the sponsor and supporters of the amendment describing these end of course tests (EOC) in less than flattering terms such as useless and a waste of time or words to that effect.

The foregoing amendment eliminates (EOC) statewide testing in three subjects which are core subjects for a child to master in order to obtain a sound basic education under the North Carolina Constitution as defined by the North Carolina Supreme Court in the Leandro case.

Attached is a document entitled **Leandro** Tenets and Compliance Standards which contains essential determinations by the North Carolina Supreme Court with respect to the constitutional right of every child to the equal opportunity to obtain a sound basic education as well as what **core subject matter** each child must have the opportunity to learn and master in order to obtain a sound basic education.

The EOC statewide tests in these core subjects are essential measurements of how each child has performed in these subjects in order for the State of North Carolina to fulfill its constitutional obligation to monitor whether or not the child has obtained or not obtained a sound basic education in that core Leandro subject area.

The EOC tests are summative assessments of student performance in each subject tested. Achieving Level III and Level IV performance on EOC tests indicate that a child has obtained a sound basic education in the course subject matter while achieving Level I or II performance indicates that a child has not obtained a sound basic education in the course subject matter.

When you eliminate the EOC tests, you have eliminated the State, LEA and parents' ability to monitor whether or not students statewide are or are not obtaining the sound basic education defined in *Leandro*. Put another way, elimination of EOC tests constitutes a destruction of the accountability system which has been in place for monitoring student performance under *Leandro*.

The Supreme Court has approved the use of Level III on the EOG and EOC tests given by the State as the appropriate standard by which to measure whether or not a student is obtaining a sound basic education. Inherent in this approval is approval of the use of EOC and EOG tests statewide as part of the entire assessment and accountability model for monitoring a student's academic achievement under the *Leandro* sound basic education standard.

Reduced to essentials, the *Leandro* core subjects, including U.S. history, civics and economics and physical science **must** be taught and the academic performance of children taking those courses statewide **must** be assessed and measured by the end of course tests to determine if they are obtaining a sound basic education by obtaining Level III or above on the EOC tests. Eliminating the EOC tests destroys the accountability and performance monitoring system necessary to determine if children are obtaining a sound basic education as is their constitutional right. Thank you for considering this information.

Cc: The Honorable Bev Perdue
Governor, State of North Carolina

LEANDRO TENETS & MINIMAL RESOURCE COMPLIANCE STANDARDS

The North Carolina Supreme Court's decisions in *Leandro I* (346 N.C. 336) on July 24, 1997 and *Leandro II* (358 N.C. 605) on July 30, 2004, set in stone, once and for all, the following tenets relating to the Constitutional guarantee to each child of the right to an opportunity to obtain a sound basic education:

FIRST: We conclude that Article I, Section 16 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a 'sound basic education' is one that will provide the student with at least:

- sufficient ability to read, write and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society;
- 2. sufficient fundamental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state and nation;
- 3. sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and training; and
- 4. sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.." emphasis added; (Leandro I p. 347).....

SECOND: Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution, as interpreted by Leandro, guarantee to each and every child the right to an equal opportunity to obtain a sound basic education requires that each child be afforded the opportunity to attend a public school which has the following educational resources, at a minimum: LEANDRO COMPLIANT PREREQUISITES

First, that every classroom be staffed with a competent, certified, well-trained teacher who is teaching the standard course of study by implementing

effective educational methods that provide differentiated, individualized instruction, assessment and remediation to the students in that classroom.

Second, that every school be led by a well-trained competent Principal with the leadership skills and the ability to hire and retain competent, certified and well-trained teachers who can implement an effective and cost-effective instructional program that meets - the needs of at-risk children so that they can have the equal opportunity to obtain a sound basic education by achieving grade level or above academic performance.

Third, that every school be provided, in the most cost effective manner, the resources necessary to support the effective instructional program within that school so that the educational needs of all children, including at-risk children, to have the equal opportunity to obtain a sound basic education, can be met. 358 NC 636, supra.

FOURTH: That a child who is showing Level III (grade level) or above proficiency on the State's ABC tests, End of Grade (EOG) or End of Course (EOC), is obtaining a sound basic education in that subject matter AND that a child who is not showing Level III proficiency (performing below grade level) on the ABC tests is not obtaining a sound basic education in that subject matter. 358 NC 624,625, supra.

"After considering the evidence and arguments from both sides, the trial court ruled that Level III proficiency (EOG and EOC test scores) was the required standard. The trial court rejected the State's argument that Level II proficiency more closely describes the 'minimal level of performance which is indicative of a student being on track to acquire' a Leandro-comporting education and concluded that: (1)'a student who is performing below grade level (as defined by Level I or Level II) is not obtaining a sound basic education under the Leandro standard'; and (2)'a student who is performing at grade level or above (as defined by Level III or Level IV) is obtaining a sound basic education under the Leandro standard.'

On appeal, although the State assigned error to the trial court's conclusion concerning the Level III standard, it

made no argument to that effect in its brief. As a consequence, the issue is considered abandoned under the appellate rules, N.C. R. App. P. 28(b)(6). In addition, our own examination of the issue reveals no grounds to disturb the trial court's findings and preliminary conclusions pertaining to the question of which test score standard should be used. As a consequence, we find no error in the trial court's ruling that a showing of Level III proficiency is the proper standard for demonstrating compliance with the Leandro decision.

With Level III proficiency established as the standard-bearer for test-score evidence, we turn our attention to whether the number of Hoke County students failing to achieve Level III proficiency is inordinate enough to be considered an appropriate factor in the trial court's determination that a large number of Hoke County students had been improperly denied their opportunity to obtain a sound basic education.

At trial, EOG and EOC test scores from across the state and from Hoke County were submitted into evidence. In addition, education and testing experts were called to testify about what the scores mean, how statewide scores compare to those of Hoke County, and what such comparisons might indicate. In its third memorandum of decision, the trial court initially assessed the quantitative elements of the test score evidence and concluded that it clearly shows that Hoke County students are failing to achieve Level III proficiency in numbers far beyond the state average. In turn, the trial court then proceeded to conclude that the failure of such a large contingent of Hoke County students to achieve Level III proficiency is indicative that they are not obtaining a sound basic education in the subjects tested. In other words, evidence tending to show Hoke County students were faring poorly in such standardized test subject areas as mathematics, English and history was relevant to the primary inquiry: Were Hoke County students being denied the opportunity to obtain an education that comports with the Leandro mandate --- one in which students gain sufficient knowledge of fundamental math, science, English and history in order to function in society and/or engage in post-secondary education or vocational training. 346 N.C. 347, supra." We agree with the trial court's assessment that test score evidence indicating Hoke County student performance in subject areas that correspond to the Very core of this Court's definition of a sound basic

education is relevant to the inquiry at issue." 358 N.C. 624,625

Those specific subject areas that are at the "very core" of the definition of an essential sound basic education by the Supreme Court are: "For purposes of our Constitution, a 'sound basic education' is one that will provide the student with at least:

- (1) sufficient ability to read, write and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society;
- (2) sufficient fundamental knowledge of geography, history and basic economic and political systems (civics) to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state and nation;
- (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education and training; and
- (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.." emphasis added; (Leandro I p. 347)..... (economic and political systems is now taught as civics)

FIFTH: That a showing of Level III proficiency is the proper standard for demonstrating compliance with the Leandro decision.

SIXTH: That a child who is performing below Level III is "at-risk" of not obtaining a sound basic education.

SEVENTH: That there are children "at-risk" of not obtaining a sound basic education located throughout the State of North Carolina and those children's needs are similar whether they live in a rural or suburban area.

EIGHT: That the State must assume responsibility for, and correct, those educational methods and practices that contribute to the failure to provide children with a constitutionally - conforming education.

NINTH: That when the State assesses and implements plans to correct educational obligations in the face of a constitutional deficiency in an LFA, or particular school, the solution proposed must ensure competent teachers in classrooms, competent principals in schools and adequate resources to support the instructional and support programs in that school so as to be *Leandro* compliant.

TENTH: Local School Systems (LEAs) are entitled to funding by the State sufficient to provide all students, irrespective of their particular LEA, with, at a minimum, the opportunity to obtain a sound basic education.

The Supreme Court ended its decision in *Leandro II* with the following:

This Court now remands to the lower court and ultimately into the hands of the legislature and executive branches, one more installment in the 200-plus year effort to provide an education to the children of North Carolina. Today's challenges are perhaps more difficult in many ways than when Adams articulated his vision for what was then a fledgling agrarian nation. The world economy and technological advances of the twenty-first century mandate the necessity that the State step forward, boldly and decisively, to see that all children, without regard to their socio-economic circumstances, have an educational opportunity and experience that not only meet the constitutional mandates set forth in Leandro, but fulfill the dreams and aspirations of the founders of our state and nation. Assuring that our children are afforded the chance to become contributing, constructive members of society is paramount. Whether the State meets this challenge remains to be determined. (358 N.C. 605,649)